

Betterment Loan FAQ

1. What Is a 'Betterment'?

A betterment is an improvement made (or caused to be made) by state or local government to real property owned by a private party, where the improvement is repaid through a charge against the property. In the case of failing septic systems, it means VDH would qualify a homeowner to receive low cost financing. The betterment loan would be recorded by the locality in its land record books, and the homeowner would repay the loan over a period of years.

2. Are Betterment Loans 'Senior' To Other Mortgage Debt?

Yes. In the event of default, it would be equivalent to a tax lien, and would be repaid before other debts. The rationale for the senior status is the State's determination there is a compelling public interest for the party to receive the loan. The superior status of the loan is what opens the door to any homeowner being able to receive financing.

3. Under What Circumstances Would the Commonwealth Authorize Betterment Loans?

Only in circumstances where the State has determined there is a compelling public interest.

4. Is This a Radical Departure?

No. The proposed betterment statute is a more elegant way to do what Virginia's local governments are already empowered to do. For example, Virginia Code 15.2-900 et. seq. allows local governments to *"...abate, raze, or remove a public nuisance. . . dangerous or unhealthy substances which have escaped, spilled, been released . . ."* and to put a tax lien on the property to recover payment. The classic example is where a local government cuts someone's yard, putting a tax-lien on the property (that bears interest) until it is repaid.

The betterment loan is superior for a variety of reasons, including that avoids the need for government to fund costly repairs directly. Because betterment loans would only become the equivalent of a tax lien in the event the homeowner defaults, the homeowner's credit rating is spared. And unlike a tax lien, which under Virginia law follows the original party until the lien is satisfied, the borrower could be released when their home is sold.

5. Would VDH Make Betterment Loans Directly?

No. VDH would merely qualify the private party to receive a betterment loan. The private party would select the lender who offers the best terms. VDH would have no responsibility to administer the loans.

6. Would VDH Be Required to Appoint Lenders?

In order for the betterment loan to be deemed a 'priority' loan (superior to other mortgage debt), there must be a nexus between the lender and the State. There are likely various ways to accomplish this, but NatLUST's counsel believes the surest way would be for statute to provide that VDH would appoint one or more betterment loan providers. While the statute could provide for VDH to appoint a sole source provider, NatLUST believes homeowners would be best served to allowing them to select from multiple lenders, including from entities such as NatLUST, which can provide low cost tax-exempt bond financing.

The statute should make clear that VDH has no responsibility for administering or collecting the loans, nor approving the terms and conditions offered by any lender.

7. Would Betterment Loans Be Deemed Debt to The State or Local Governments?

No.

8. Will NatLUST's Betterment Loan Proposal Create Unfunded Mandates on Local Governments?

No. The local government's only role would be to record the betterment loan in its land record books, for which they will charge a recordation fee.

9. Why Can't Homeowners Take Out Regular Mortgage Loans To Fix Their Septic Systems?

Some homeowners will certainly use conventional sources of financing. However, many homeowners no longer qualify for traditional financing, and recent turmoil in the mortgage market has likely restricted the availability of credit. Absent the betterment loan program, VDH could be faced with the Hobson's choice of either assessing civil penalties against homeowners who are unable to secure financing, or allowing failing systems to continue to pollute State waters.

10. Would A Betterments Statute Adversely Impact The Availability of Mortgage Loans?

No. When Massachusetts introduced its betterment statute nearly 10 years ago, the mortgage lending industry opposed the legislation, and made claims that mortgage loans would dry up. MA officials report such claims proved totally unfounded and there was no change in mortgage availability.

FNMA. FNMA confirms that it has for many years purchased loans made in states with betterment lending programs on the same terms and conditions as any other state. FNMA representatives are aware Virginia has a compelling public interest in protecting State waters from failing systems.

Mortgage Lenders. Several mortgage lenders have informally opined that they are aware the days the State allowing homeowner's to operate failing systems is coming to an end, and that a betterment lending program may be preferable to other options. For example, betterment loans would likely be viewed by mortgage lenders as more preferable than:

- A. Homeowners having to borrow from high interest rate lenders;
- B. VDH condemning a property; or
- C. VDH or local government making the repair and putting a tax lien on the property (setting the stage for the property to be auctioned).

Several mortgage lenders have noted that the value of the property will be improved and home made more marketable. To the extent the value of the property rises by the amount of the betterment loan (e.g. \$5,000 to \$20,000) existing mortgage lenders would not be impaired.

11. If a Borrower Later Sells Their Home, Could They Be Released From the Loan?

Yes. Depending on the terms of the loan, the new borrower will either assume the loan or the loan would be repaid.

12. What Other Uses Might There Be For Betterment Loans?

Dry Cleaning Stores. Many older dry cleaning stores are contaminated by Perchloroethylene ('perc'), a cancer causing chlorinated solvent. DEQ reports cleanups can be very expensive. While DEQ operates a 'voluntary remediation' program, there is no ready source of financing, so many cleanups do not get done.

New Federal Regulations Impacting Regulated UST Owners. The 2005 Federal Energy Act places new unfunded burdens on DEQ and regulated UST owners. DEQ will soon have to adopt 'secondary containment' regulations, which will eventually result in owner/operators having to make expensive upgrades. A betterment loan statute could be used by DEQ to induce UST owners to upgrade their facilities sooner rather than later. Modern facilities with double walled tanks and pipes are less likely to cause expensive cleanups, and would likely result in less demand on the Virginia Petroleum Storage Tank Fund.

Brownfields. Betterment loans could be used to help with brownfield cleanups.